IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 250 OF 2006.

Sangappa Lalappa Athavale. ... Appellant.
Versus.
Pimpri-Chinchwad Municipal Corporation
and others. ... Respondents.

Shri S.V.Pitre for the Appellant.

Shri N.V.Walawalkar, Senior Counsel for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 27th April, 2006.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Appeal is preferred by the original Plaintiff. In a suit filed by the Appellant/Plaintiff, the trial Court passed a decree declaring the notice under section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the said Act of 1966) issued by the Respondent No.1 Corporation to be illegal and also granted mandatory injunction in favour of the Appellant directing the Respondent No.1-Corporation to reconstruct the portion of the suit house which was demolished. The decree has been set aside in an Appeal preferred by the Respondent No.1-Corporation.

2. Shri Pitre, the learned Counsel appearing for

the Appellant submitted that a part of the suit house was demolished without following the due process of law. He submitted that even assuming that a portion of the house which is demolished was covered by the proposed development plan road, no acquisition proceedings have been taken out by the Respondent No.1-Corporation and therefore, the action of demolition was patently illegal.

3. Shri Walawalkar, the learned Senior Counsel appearing for Respondent No.1 stated that only that portion of the suit house of the Appellant was demolished which was coming in the area designated for the development plan road. On instructions he stated that on the basis of the notice under section 53(1) of the said Act of 1966 which is the subject matter of the suit, the Respondents do not desire to carry out any further demolition. He also states on instructions that so far as the property which is required for development plan road is concerned, proceedings will be initiated by the Respondent No.1-Corporation for acquisition in accordance with the law.

4. I have considered the submissions. In paragraph 14 of the decision of the Appellate Court, it is observed thus:

14. .....Indeed the Plaintiff himself admitted in his cross examination that the portion of his house demolished by Defendants was coming under the proposed road and that remaining portion (not coming under the road) was not demolished."

I have also perused the notes of evidence. The Appellate Court is right in holding that there is a clear admission on the part of the Appellant/Plaintiff that only a portion of the suit house has been demolished which is covered by the proposed D.P.Road. It is also an admitted position that an application was made by the Appellant for regularisation of the suit structure which was not granted. There is a categorical statement made on behalf of the Respondent that no further demolition will be carried out on the basis of the notice under section 53(1) of the said Act of 1966 which is at Exh.78 before the trial Court. There is also a statement made that proceedings for acquisition of the land affected by development plan road will be initiated.

5. In view of this position, there is no illegality in the order of the Appellate Court. No substantial question of law arises. Second Appeal is dismissed.

Judge.